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ABSTRACT

The first meeting of the National Commission on New Technological Uses of Copyrighted Works (CONTU) established some basic premises and procedures. Commissioners representing various interests concerned with copyright legislation (librarians, publishers, consumers and lawyers) discussed the responsibility of the Commission to review copyright legislation. The basic objectives of the Commission were to assure access to information, while protecting the rights of copyright owners. The meeting focused on the uses of new technology [such as computers] to store and reproduce copyrighted works, photocopying, and the fair use doctrine. Action also was taken on rules meeting rules, budgets, appointment of an executive director, enaction of subpoena powers, and arrangements for future meetings. (LS)

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NATIONAL COMMISSION

ON

NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

(CONTU)

Meeting No. 1

October 8, 1975

9:30 a.m. - 4:00 p.m.

Wilson Room
Library of Congress
Washington, D. C.

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
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Others Present at this Meeting:

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Deputy Register of Copyrights

Mr. Arthur J. Levine
Special Consultant to the Acting Librarian of Congress
for CONTU

Mrs. Elizabeth Hamer Kegan
Assistant Librarian of Congress

Mrs. Marlene Morrisey
Executive Assistant to the Librarian of Congress

AGENDA

Welcoming statement by the Acting Librarian of Congress

Swearing in of Commissioners by the Honorable David L. Bazelon, Chief Judge, United States Court of Appeals for the District of Columbia

Remarks by the Chairman and Vice Chairman

Adoption of the rules of procedure and agenda for the first meeting

Approval of budget estimates for Fiscal Year 1977

Approval of Executive Director

Motion on use of subpoena power by Commission

Remarks and discussion by Commissioners on the jurisdiction, scope, goals, priorities and methods of operation of the Commission

Discussion of the Association of American Publishers' and American Library Association's proposal for a preliminary review of the library photocopying issue

Arrangements for future meetings

1. John G. Lorenz, Acting Librarian of Congress, welcomed the members of the Commission, which "was consciously constructed to represent the major parties to the long debate concerning copyright and photocopying and protection of computer software."

Although in the process of selection, the members have been considered as either users, proprietors, and the public, Mr. Lorenz suggested that these categories were no longer applicable. "All of us are meeting here, for the first time, as informed and concerned members of the public, charged with the most difficult of tasks: accommodating the fabric of the law to the impact of technology so that both can be of maximum benefit to society.

"It is appropriate that CONTU is administratively supported by the Library of Congress and that we are meeting here today. Copyright and the Library of Congress have been wedded for over 100 years, through the Copyright Office. The Office of the Librarian of Congress has been held by authors, lawyers, librarians, and the illustrious son of an illustrious publisher. While librarianship is our profession, the health and welfare of the nation's intellectual life is one of our major goals.

"In supporting S. 2216 when it was introduced in 1967, the former Librarian of Congress, L. Quincy Mumford, wrote to Senator Eastland, Chiarman of the Judiciary Committee as follows:

> '...as both the national library and as the home of the Copyright Office the Library has a deeply established background in a wide range of the theoretical and practical problems the Commission will encounter. The dual purposes of the Commission's work as stated in Section 1 of the bill--"To assure for such purposes access to copyrighted works, and to provide recognition of the rights of copyright owners"--reflect exactly my own view of what the Commission should aim to accomplish.'

That remains the position eight years later of the Library of Congress.

"It is fitting that the Commission will conduct its important work in association with the Library. In welcoming you, I want to assure you of our confidence not only in your abilities but also in your good will, of our intention to put at your disposal those resources required for your work, and of our complete support for this group as the vehicle for solution of the problems within your mandate.

"I know that the Librarian-designate, Dr. Daniel Boorstin, who could not be with us today but asked me to convey his best wishes, supports the concept and goals of the Commission.

"We have no illusions about the difficulty of the tasks before the Commission. But if the spirit of good will and cooperation that we all feel today is not lost in the months ahead, I have no doubt that we will succeed. Certainly, the Library of Congress will do all in its power to maintain and nourish that spirit."

2. The Honorable David L. Bazelon, Chief Judge of the United States Court of Appeals for the District of Columbia, administered the oaths of office to the Commissioners.

3. Judge Fuld, Chairman, joined the Acting Librarian in welcoming members of the Commission to this initial meeting. He referred to the expection "that reasonable people can find solutions to the most difficult of problems. Our mandate is broad. The job with which we have been entrusted is substantial. Our time, however, is short."

Judge Fuld traced the history of the establishment of the Commission. It was originally proposed in a bill introduced and passed by the Senate in the 90th Congress in 1967. In the 193rd Congress S. 3976 was introduced, including, as Title II, the creation of the Commission. The bill passed the Senate on September 9, 1974 and, with amendments, the House of Representatives on December 19, 1974. The President signed the measure into law on December 31, 1974. On July 25, 1975 he appointed the members of the Commission, who "are joined by the Librarian of Congress and the Register of Copyrights." The Commission will expire "by March of 1978."

"CONTU (to use its acronym) was first suggested at a time when it appeared that the long-awaited general revision of the Copyright Act of 1909 was about to become a reality. The idea was to omit from the new Copyright Act some of the knotty problems created by the new technological advances, whose future development was difficult to predict, and have a Presidential Commission study them. Copyright revision thus would not be delayed by consideration of these technological matters, and Congress would receive expert recommendations for additional legislation from the Commission at the conclusion of its work."

Although the Copyright Act revision is still in process, the "Commission will be able to start functioning without having to wait until the enactment of the Copyright Revision Bill."

There are two specific subjects on which Congress wants the Commission's recommendations. "The first--and it is basic--is to study and compile data on the reproduction and use of copyrighted works of authorship in conjunction with automatic systems capable of sorting, processing, retrieving and transferring information--which we may call the computer problem--and the reproduction and use of such copyrighted works by various forms of machine reproduction--which we may term the reprography problem. Our second subject is to study and compile data on the creation of new works (1) by the application or intervention of automatic information storage and retrieval systems or (2) by the application or intervention of any form of machine reproduction.

"Our ulitmate objective, under the statute, is to make recommendations for such changes in copyright law or procedures as may be necessary to assure access to copyrighted works--with respect to these problem areas--and at the same time to provide recognition of the rights

of the copyright owners. In so doing, we must subject the solutions, as we consider them, to two tests: first, will our recommendations tend to result in an increase or decrease in the creation of intellectual property and, second, will the channels of dissemination of copyrighted works be broadened and increased or diminished?

"This is not the first time that technology has opened up a vast new area for the circulation of the works of authorship. It happened more than five centuries ago when Gutenberg discovered the art of printing with movable type. It happened in more recent times with the invention of the phonograph, of silent motion pictures, of radio, of sound movies, then of television followed by cable television and now reprographic devices such as microfilm and microfiche, duplicators and a host of devices storing and programming copyrighted works, among others, for instant processing, retrieval and transfer.

"It is my view that the reprography problem is the most urgent of those on our list, and I suggest that we give it priority. The computer problem certainly will become increasingly important as the techniques of using copyrighted works in storage and retrieval systems develop with further advances in the art. Here, too, our directive is to devise a system that will allowaccess to copyrighted works for the purpose of their reproduction and use in computer systems, again with recognition of the rights of the copyright proprietors. Whether or not the system which we work out for dealing with the conflicting economic interests under the heading of reprography will also fit the computer problem is a matter for future consideration.

". . .We are fortunate in having on this Commission outstanding representatives of the producer groups and the user groups." It is hoped that these parties who have a direct interest in the subject "can arrive at joint recommendations which we of the public sector can support. As I have indicated, our paramount interest must be to provide recognition of the rights of copyright owners in these new techniques of dissemination and to assure reasonable access to the public when such technology is substituted for present methods of reproduction and communication. In short, the paramount interest of all of us is to insure that new intellectual works are created and disseminated.

"I trust that we shall be able to reach agreement on how the public good can best be served by reconciling the interests of those who produce copyrighted materials with those who employ modern devices to reproduce or circulate them for public consumption. Each group is important to the other, and each should attempt to help the other reach a satisfactory solution which will serve the long-range public interest. It is my fervent hope that our ultimate recommendations will result largely from such cooperation."

4. Professor Nimmer, Vice Chairman, expressed his personal hope that this Commission will do as much of its own work as possible. "We expect good and effective staff work. This is essential. But I hope that we will not merely endorse work that others do but rather that we as Commission members will do the work ourselves." The mandate creating the Commission instructs us "to come up with recommendations. I hope that we will be able to embody those recommendations into specific proposed legislation."

Professor Nimmer referred to the relationship between the Commission's work and the current Congressional work on the Copyright Revision Bill. A comprehensive revision of the Copyright Act will require careful consideration of the relationship of the Commission's work to the revision. It is hoped that the recommendations of the Commission will not be anticlimatic to the anticipated new law.

Referring to the photocopying issue before the Commission, Professor Nimmer expressed his personal view that there is a measure of agreement in this area among the Commission members -- producers, users, and the public. Producers would agree, he felt, that it is not desirable to require permission before photocopying is accomplished. It would not be desirable or practical to have to telegraph a copyright owner before an item is copied and negotiate a price arrangement. Rather, some form of licensing arrangement seems a more sensible approach. Most users represented here would probably agree that the mere fact that a work is reproduced by photocopying instead of printing does not in itself constitute "fair use." The issue then becomes one of determining where "fair use" ends and copyright protection begins. There is also perhaps some agreement (an area of agreement in which Professor Nimmer does not join as of this moment) on the principle that as long as not more than one copy of no more than one article is reproduced for one patron in a library that is "fair use." He expressed some misgivings about accepting this as "an appropriate line of division," but indicated that he will keep an open mind on the issue.

The question arises then, "how do we determine the appropriate line?" Three factors need to be considered:

(1) the question of how one keeps track of the uses of a work (the collection question). Would it be feasible or would it be too costly to require those who operate photocopying machines to maintain a record of how often they use copyrighted material? Some hard data on this question is needed. How do we get it?

(2) the distribution question. How does one equate distribution among copyright owners? If we assume that it is not feasible to count the uses of copyrighted work, then some kind of a sampling method becomes necessary. What meaningful sampling would be feasible? Is a compulsory licensing mechanism feasible? What about costs?

(3) enforcement. How do we enforce whatever mechanism seems most agreeable? Perhaps consideration should be given to what other countries have done, going into the criminal area in terms of enforcement. Criminal law is overly extended, but it may be a way of enforcement in areas where civil liability is not effective. For example, the possibility of criminal liability in income tax returns helps to keep them as honest as they are.

These three areas deserve some careful thought: (1) collections -- What is possible in keeping track of collections and how costly and difficult would this be? (2) What is the most feasible means of getting a fair distribution among copyright owners? (3) How shall the mechanism agreed upon be enforced?

Hard data and intelligent decisions are necessary in order to determine the "fair use" line.

Professor Nimmer also underscored the need for the Commission members to become more informed about computer operations. Should input, for instance, as distinguished from printout, constitute an infringement of copyright? The Commission is not tied to any existing rule of "fair use." Instead, it can take a fresh look at the situation. He urged that a first order of business be "to educate ourselves." "People who are knowledgeable technologically need to tell us some hard facts about computers."

5. At the suggestion of the Chairman, Roberts Rules of Order were adopted unanimously as the rules of procedure. Members concurred in the agenda for this initial meeting.

6. Budget. (attached) The Chairman explained that because the Library must submit its budget estimates for fiscal 1977 to the Office of Management and Budget by October 15 it is essential for the Commission to act upon the budget at this meeting. The 1976 funds (including transition funds for a 3-month period between the ending of the current fiscal year on June 30, 1976 and the beginning of a new fiscal year on October 1, 1976) will cover a 15-month period, ending on September 30, 1976. The 1977 budget estimate will cover the period October 1, 1976 through September 30, 1977.

Questions were raised about the adequacy of the assumption of two meetings per month, as reflected in the budget. Is the estimate for Commissioners' fees ($100 per day) sufficient if it should be necessary to have seminars or hearings in Washington or in different parts of the country? Is the budget sufficient to enable the Commission to operate in the way in which the law intended it to operate? Is the travel allotment (about $140 per person on the basis of one meeting per month) adequate?

It was explained that the Special and Temporary allotment covered reimbursements for the Commissioners, but that travel is covered in a separate allotment. The 1977 travel estimate, approximately $2000 per month, was thought to be adequate. Should that amount prove to be insufficient, some funds could be transferred from the personnel salary allotment.

Mr. Donald Curran, Chief of the Library's Financial Management Office, added that the travel estimate was based on average travel costs and are gross approximations. If there are savings in the personnel salary allotment, as expected, these savings can be used for other necessary expenditures.

Mention was also made of the ceiling placed on the Library for attendance at professional meetings. The Commission's budget allotments do not make allowance for this. There is some question as to whether or not that limitation should apply to the appropriation for this Commission. If not, there is no need to classify the travel.

Further concern was expressed about the budget allotments for honoraria and travel for meetings. Mr. Cary and Mr. Lacy pointed out that many individuals and groups throughout the country will want to be heard by this Commission. It may prove necessary to arrange for subcommittees and panels that can offer opportunities for people in other parts of the country to be heard. Thus, travel and fees may be involved in addition to formal meetings of the Commission.

There is also the matter of possible contractual studies. It may be important to be able to make a contract with a research organization or employ a consultant for special studies, and the budget should have this flexibility. Mr. Curran assured the Commission that to the extent that funds are available contracts may be made for a study or other effort instead of employing staff. The $100 per day fee is not a limitation for contractual studies, Mr. Curran also explained.

Mr. Levine described the history of the fiscal 1976 budget, which had to be submitted shortly after the President signed the bill establishing the Commission. The first budget submission was considered by the Congressional committee to be too high and it was reduced on the basis of advice from the authorizing committee's staff.

In response to Ms. Karpatkin's question about procedures for switching funds from personnel salaries to other purposes, Mr. Curran explained the Library's procedures for internal bookkeeping adjustments of this kind. Reasonable transfers within allotments can be made internally as directed by the Commission through its staff. More fundamental or major changes in program would need to be explained to the Appropriations Committee. Ms. Karpatkin referred to the possible assumption in the budget estimates, as submitted here without back-up papers, that the Commission members would play a relatively minor role in this work and the staff a major role, a philosophy in disagreement with the thinking advanced by Professor Nimmer at this meeting.

Mr. Curran indicated that the allocations within the 1976 budget can be readjusted at the Committee's discretion; the House and Senate Appropriations Committees should be advised of any major changes in the Commission's use of funds. The 1977 budget estimate has been developed

on lines similar to the 1976 budget. It must be submitted on October 15, although some adjustments can be negotiated between now and November 15.

Ms. Karpatkin noticed the absence of a contingency item. Mr. Curran explained the reasons for this. He also referred to the need for a decision on inclusion of an additional $12,000 in the Library's supplemental request to cover the five percent Federal pay raise for Commission staff.

Mr. Wedgeworth cautioned about hasty judgment on the size of the staff. As the Commission's work progresses, it may find the need for more staff than now seem necessary. Mr. Miller favored less frequent two-day meetings, which would probably prove more productive and could reduce transportation costs. He shared others' view that 12 Commission members and 16 staff members seemed to be a questionable ratio. He urged slow staffing for the foreseeable future and real reliance on working Commissioners. Mr. Cary again stressed the need for adequate travel funds; if the group breaks up into sub-groups for various tasks, there is bound to be additional meetings and travel.

Upon Mr. Lacy's motion, which was seconded, the Commission voted approval of the budget for fiscal 1976, with the understanding that there could be maximum flexibility on use of the funds, and with addition of the five percent staff salary increase, to be requested in the Library's supplemental request for 1976. The 1977 budget estimate was also approved with the same understanding about flexibility. Mr. Lacy included in his motion the thought that the Executive Director and Chairman, in consultation with the Library's fiscal office, might make adjustments as necessary within the budgets to reflect the concept that the Commission would be hard-working, would meet a good deal, would hold hearings and contract for studies as necessary. It was understood that the Commission members would carry the principal burden of work and that the Commission would have freedom to contract for studies requiring specialized knowledge outside the expertese of the members. Line items may need to be adjusted as necessary in accordance with this philosophy.

7. At this point the Commission went into executive session in order to take care of internal housekeeping matters, after which it recessed. The public session was resumed at 1:30 p.m.

8. Appointment of Executive Director. Mr. Lacy moved "the selection of Mr. Arthur Levine as Executive Director of the Commission's staff. In doing so I take note of the fact that Mr. Levine wishes to reserve up to 25 percent of his time for the private practice of law. We take note further of the fact that Mr. Levine has stated that he will consider himself bound by the Federal statutes and Executive Orders relating to conflict of interest, whether or not they legally apply to employees of the Legislative branch; that it is his intention to avoid any representation or counseling of clients in the areas of the Commission's specific concern; and that it is his intention to inform the Chairman of any outside activity

that may raise any potential question of conflict." Mr. Lacy expressed the Commission's satisfaction with this understanding with Mr. Levine. The motion was seconded and adopted unanimously.

9. Use of subpoena power. It was proposed and agreed that the power to issue subpoenas would be exercised by the Chairman on the affirmative vote of seven Commissioners.

10. Jurisdiction, scope, goals, priorities, and methods of operation of the Commission. At the Chairman's request, each Commissioner had opportunity to indicate his thoughts on these points.

Mr. Cary observed that the computer issue is perhaps the most important and complex area to be considered by the Commission. In 1967 when the matter first came up in Senate committee hearings, experience with computers was limited and the thinking then was principally about use of computers as a retrieval mechanism rather than for input of information. The situation has changed in the interval. It may be difficult to get all the information the Commission needs on this complex matter of wider computer use without some type of hearing. He suggested that consideration be given to having computer firms orient Commission members about current capabilities and uses of computers.

Library photocopying is a difficult area also, but there is a large body of available data upon which the Commission can draw. Mr. Cary associated himself with the view expressed here earlier that this would be a working Commission, which would not simply "rubber-stamp" a report.

Since the Commission has been established for the period of only three years, the crowded program is going to have to be compressed, and it seems imperative therefore that the members be prepared to do considerable work. The Commission will have to compile data, study the data, and make recommendations in the area of photocopying and computer use that will take into consideration (a) the need for access to copyrighted materials as well as (b) the protection of the rights of copyright owners. By adhering to these two principles the Commission should be able to come up with equitable solutions to which reasonable men and women can agree.

Mr. Dix, addressing the photocopying issue, referred to the substantial on-going activity in this area. He suggested the need for more concrete information about what is being copied, how much copying is going on, what is the impact of this copying on the publishing industry and the encouragement of creativity. He mentioned a University of Indiana study financed by the Office of Education and some data about the experience of the National Lending Library in England. These sources and others could provide data on single copying by libraries for scholarly use -- how often is a title being copied, for example.

Mr. Hersey explained his conflicting position because of his feeling of responsibility to society, libraries, schools, to culture generally and the "creative spark," and his responsibility to other authors,

to himself, and to his family. It is the author's product that is the object of the bargaining. The issue involves one argument that the author's products and services should be put to the uses of the society in ways in which others involved are not asked to contribute. Librarians, directors, actors, teachers, copying corporations are not asked to offer their services free. Mr. Hersey mentioned the under-representation of authors in the membership of the Commission. He recognized that there are proprietors of other kinds, but fundamentally it is the author's product that is being bargained for and his one vote does not seem to represent a fair share of the bargaining power. He therefore must view himself as representing the Authors' League, which represents most professional authors. This issue of equity is of real concern to authors.

Ms. Karpatkin indicated that the Commission has to assume that legislation it recommends will ultimately be legislation in the public interest. She looked forward to identifying with the public interest rather than individual interests.

Mr. Lacy comes to this work with the view that it is in the economic interest of all that efforts be made to achieve the widest possible use of the works of an author to assure maximum use of creative output. Some of the members are here because they understand certain technical problems rather than because of any special interests. His hope is that the Commission can achieve genuinely sound solutions in the public interest. He also is a member of the Authors' League and a member of the American Library Association.

Mr. Lacy hoped the Commission would not feel bound by present practices; 1975 practices will be remote by the time this Commission's recommendations are adopted; therefore, the Commission will need to move beyond immediate problems and develop some principles by which the Copyright Law can accommodate itself to the future situation. It would not seem appropriate to conduct extensive new surveys on copying uses since this data would soon become outdated.

There is usefulness in identifying areas of agreement in the photocopying issue. Librarians generally have agreed that multiple copying is not fair use. Authors and publishers have indicated an acceptance of the concept that fair use as generally interpreted has a wide applicability and that a library should not be liable for infringement by others using its premises.

Systematic photocopying of journal articles is the primary area of contention. Mr. Lacy indicated that he approached the compulsory licensing question with an open mind, although this may not necessarily be the solution. In some areas there may be no need for compulsory licensing. Instead, blanket licenses may be a solution. He advised that the Commission not start its work with the assumption that compulsory licensing is agreeable to publishers or librarians.

Mr. Lacy agreed with Mr. Dix that data from existing studies should be utilized. He mentioned a National Science Foundation grant

to the Bureau of Standards for study concerning computer uses.

Mr. Miller, who characterized himself as an "intellectual producer," viewed himself as a public member of the Commission. He represented no constituency other than himself. He agreed that a first line of attack should be to find out the state of the art of computers. Although copying machines such as Xerox are in much use today, they are not necessarily the totality for the future. The staff will need to marshal a large amount of technical and other information in digestive bites for the education of the members. He did not see either photocopying or computers as having top priority; rather they need to be taken up together, and the first step is education in these areas.

Mr. Perle agreed that all members represent the public interest although this is not indicated in the Statute. Members were appointed from different segments of society but that does not mean that they must necessarily represent the interests of those segments. The segment not represented is the portion of the general economy involved in the creation of material by the use of sophisticated machines. He urged education of members by representatives from leading hardware people rather than from the staff. "We cannot make recommendations for legislation that will cover the cassette when we are working with the piano roll." Education direct from the experts is a first order of business.

Mr. Sarbin stated that he brought experience in undercapitalized enterprises; he is much concerned about that aspect of the Commission's work. He had doubts about the Commission's ability to do all the things individual members may want. The staff may not be able to provide all the information indicated as desirable, and when we go outside to get technical reports and consultation, we are likely to be handicapped by the limited funding.

Mr. Wedgeworth and Ms. Wilcox had no comments here.

Ms. Ringer spoke of the history of the Commission and its funding. The matter goes back to the 1960s; revival of interest in copyright revision has been tied in with revival of the Commission bill. In putting it forward as separate legislation, it was felt that the computer issue should get underway now and photocopying should be tied in with revision. There were difficulties in getting the Commission legislation. Earlier realistic budget estimates were considered too high. The reductions, as reflected in the existing budget, were essential in order to get the Commission established. The Register knew the Commission would try to use the funds available as effectively as it can. A conference room is being made available to us in the building at Crystal City which houses the Copyright Office; the Commission will be on a different floor, however.

As an ex officio non-voting member the Register will participate in meetings, but she anticipates no other contact between the Copyright Office and the Commission unless the Chairman wants it. She made it clear that the Copyright Office and the Register would not intrude in any way. Staff support from the Copyright Office would be available only if the Commission wants it.

The Register saw the questions immediately before the Commission as what?, how?, and when? What are we going to do? How are we going to do it? In what order are we going to do it.

An important point is the close interaction between this Commission and future actions of the Congress, which is in the last stages of a long legislative program that will lead to the revision of the Copyright Act probably by the end of nextyear. The new provisions would become effective about a year after that. There are several provisions in the revision bill that are of immediate concern to this Commission. The origins of the Commission did not have anything to do with photocopying. It has been the newer issues concerned with automated systems for manipulating information that could not be settled in the revision bill. The patterns have not really emerged yet. This is not the case with photocopying -- the patterns, while they have changed, are recognizable. But it is the computer uses that cannot be handled in the Copyright Revision Bill, and so the idea of a National Commission developed, with members from the different groups. It is in this computer area, as Mr. Cary has indicated, that the Commission can do its most important and necessary work.

It was expedient to include the copying issue in the mandate of the Commission, but it is the computer issue that is critical and what this Commission does in this area will be important to the Congress.

The Register reviewed the revision bill's provisions on fair use. The language is broad enough to cover a lot of what some librarians want to do. For a long time the feeling of "let's leave it to fair use" prevailed. Then in the late 1960s when more copying was being done an initiative was begun to get a specific language exemption into the bill. Section 107 deals with fair use; section 108 with reproduction by libraries and archives. There is now the question of how these two sections interact. Does Section 108 say what libraries can do? If they want to do more, does Section 107 on fair use make this possible? Or are libraries confined to the provisions of 108? The answer is not yet clear.

Because classroom photocopying was partly settled, it was removed from the mandate. We cannot deal with face-to-face teaching activities. Everything else dealing with reprography is in our mandate. Corporate photocopying as well as library photocopying should be examined. The Register then read the testimony she would be presenting the next day to the Senate Judiciary Committee.

The real issue concerns the addition of Section 108 to the bill. If it were made to supersede the fair use doctrine no limitations would be necessary. But as long as fair use applies to library photocopying as it now exists, some limitations are essential. The inclusion of 108 wipes out some of the flexibility of fair use, i. e., Section 107. As long as both provisions are in, 108 must put some limitations on the fair use copying in 107. A clearer statement, including the relationships between the two sections, is essential.

In regard to Section 108(g), the Copyright Office believes that it would be a mistake to delete (g) completely, although it must be clarified, and it should be reexamined by the Commission in the light of the real concerns of librarians, including the question of photocopying for legitimate library loan use and arrangements for a library to become the source of a given number of photocopies. There is need for clarification from the Commission on the development of a revision of the 1935 "Gentleman's Agreement" governing library photocopying, an agreement which should be replaced by a more meaningful and better-named provision, and data should be collected concerning interlibrary loan activities as background for volume proposals for licensing arrangements. The figures on production by photocopies in large commercial and profit-making enterprises need to be known.

It is essential that in the revision soon to be acted upon in the Congress something like Section 108 be included with a limitation that would not use the word "systematic" but would draw a line librarians can live with.

Guidance is needed from the Commission (1) on the computer issues (an area where pioneer work is urgently needed), (2) on the relationship between Sections 107 and 108 in the revision bill, and (3) in the collection of information about the reprographic production of copyrighted works in large industrial, commercial, and profit-making organizations. In addition, there needs to be an up-to-date version of and renamed "Gentleman's Agreement," collection of data about proposals for voluntary licensing arrangements, and collection of information about lending and interlibrary loan activities.

Mr. Nimmer moved, and the motion was seconded and carried, that subcommittees may be instituted on various subjects on the affirmative vote of seven members, and the composition of such subcommittees shall be determined by the Chairman.

11. The Chairman read a letter signed by the President of the American Library Association and the Chairman of the Association of American Publishers concerning procedures for dealing with the copying question. The letter requested that Messrs. Dix and Lacy be asked to make preliminary review of proposed steps toward resolution of the issue.

Although both Messrs. Dix and Lacy expressed their interest in furthering resolution of the question in the most appropriate way, they had questions about the suitability of this suggested procedure. Solutions to these questions need to come from the Commission as a whole. A smaller group might be helpful in defining the problem and outlining options. Mr. Wedgeworth gave further background on the letter and the ALA's desire for guidance. However, in view of the Register's report today, it may be wise to proceed differently. He suggested that a subcommittee might review and report on the matter and that Mr. Hersey should

be added to the subgroup. Professor Nimmer questioned whether this was premature. Mr. Hersey favored some early effort here. The authors are anxious to see the question resolved. While authors have agreed with Section 108, they view "systematic reproduction" as free publication, and this is something about which they have very strong views. Mr. Miller did not see the need for immediate input from the Commission on this question. Mr. Perle was inclined to this view also.

However, Mr. Wedgeworth explained that the issue would continue to be raised. Ms. Karpatkin pointed out the questions this raises as to how the Commission plans to organize in order to get its work done. Perhaps the letter should be tabled.

As an alternative, the Acting Librarian suggested that it would be in the Commission's interest to have a presentation at the next meeting of the current views on the photocopying issue as seen by some of the principal parties involved. At the Chairman's request, he put his suggestion in the form of a motion that Messrs. Dix, Lacy, and Hersey be asked to give at the next Commission meeting a coordinated presentation of the photocopying issue, indicating areas of agreement and disagreement. The motion was seconded.

In the discussion questions were raised as to whether the Commission needed to go into the photocopying issue very broadly at this time. Mr. Wedgeworth thought it should; Mr. Nimmer questioned the necessity for this. He emphasized that the Commission must look beyond the proposed law and concern itself with questions of the future. The Commission should not bog down on the matter of the meaning of systematic reproduction. Mr. Hersey pointed out the dangerof allowing the photocopying issue to be bypassed. The motion was carried, and Messrs. Lacy, Dix, and Hersey will present an educational report to the full Commission on the state of the art with respect to the photocopying issue, including areas of agreement and disagreement.

12. In response to questions about the Commission's <u>impact on present copyright revision</u>, Mr. Miller read the legislation. The Commission is not charged with influencing current legislation. Its ultimate report will be recommending modifications in the Copyright Law as it exists when the Commission concludes its work. Mr. Lorenz mentioned that the revision may reflect the existence of this Commission. Ms. Ringer indicated that this situation is not clear. The current revision will lay the basis for something further. The Commission has been created, and it will make recommendations for something further. There is not likely to be opportunity for formal input from the Commission on immediate revision legislation. It might be possible to make some recommendations on the relationships between Sections 107 and 108(g), although this might be difficult at this juncture.

13. The following dates were agreed upon for the next meetings of the Commission:

Wednesday, November 19, 1975

Thursday and Friday, December 18-19, 1975

Tentatively, Thursday and Friday, February 12-13, 1976

In addition to including on the November meeting agenda reports on the state-of-the-art and the current positions regarding the photocopying issue, the Commission staff was asked to give priority to determining feasible steps of getting computer information before the Commission.

The meeting was adjourned at 3:57 p.m.

Marlene Morrisey
Executive Assistant to the Librarian of Congress
October 17, 1975

Salaries and Expenses, National Commission on
New Technological Uses of Copyrighted Works

	1976	1977 Estimate	Increase
Salaries and Compensation	$235,483	$360,393	+ $124,910
Special and Temporary	28,800	28,800	----
Personnel Benefits	21,317	32,049	+ 10,732
Regular Travel	21,900	24,858	+ 2,958
Attendance at Meetings	----	2,000	+ 2,000
Rental of Equipment	20,000	35,200	+ 15,200
Printing, Publications	9,500	19,000	+ 9,500
Printing, Forms	10,000	15,000	+ 5,000
Professional & Consultant Services	----	43,200	+ 43,200
Office Supplies	1,000	2,000	+ 1,000
Books and Library Materials	1,000	1,500	+ 500
Total, CONTU	$349,000	$564,000	+ $215,000

Note: Salaries and Personnel Benefits cover the cost of 16 and 20 indefinite positions in fiscal 1976 and 1977 respectively.

Public Law 93-573
93rd Congress, S. 3976
December 31, 1974

An Act

88 STAT. 1873

To amend title 17 of the United States Code to remove the expiration date for a limited copyright in sound recordings, to increase the criminal penalties for piracy and counterfeiting of sound recordings, to extend the duration of copyright protection in certain cases, to establish a National Commission on New Technological Uses of Copyrighted Works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Copyrights.

TITLE I—AMEND TITLE 17 UNITED STATES CODE, AND FOR OTHER PURPOSES

17 USC 1 note.

SEC. 101. Section 3 of the Act of October 15, 1971 (85 Stat. 391), is amended by striking out "and before January 1, 1975".

SEC. 102. Section 104 of title 17, United States Code, is amended—

(1) by striking out "Any person" and inserting in lieu thereof "(a) Except as provided in subsection (b), any person"; and

(2) by adding at the end thereof the following new subsection:

Willful infringement, penalties.

"(b) Any person who willfully and for profit shall infringe any copyright provided by section 1(f) of this title, or who should knowingly and willfully aid or abet such infringement, shall be fined not more than $25,000 or imprisoned not more than one year, or both, for the first offense and shall be fined not more than $50,000 or imprisoned not more than two years, or both, for any subsequent offense."

SEC. 103. Section 2318 of title 18, United States Code, is amended by striking out all after "fined" and inserting in lieu thereof "not more than $25,000 or imprisoned for not more than one year, or both, for the first offense and shall be fined not more than $50,000 or imprisoned not more than two years, or both, for any subsequent offense.".

Renewal term, continuation.
17 USC 24 note.

SEC. 104. In any case in which the renewal term of copyright subsisting in any work on the date of approval of this bill, or the term thereof as extended by Public Law 87-668, by Public Law 89-142, by Public Law 90-141, by Public Law 90-416, by Public Law 91-147, by Public Law 91-555, by Public Law 92-170, or by Public Law 92-566 (or by all or certain of said laws), would expire prior to December 31, 1976, such term is hereby continued until December 31, 1976.

TITLE II—NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

ESTABLISHMENT AND PURPOSE OF COMMISSION

17 USC 201 note.

SEC. 201. (a) There is hereby created in the Library of Congress a National Commission on New Technological Uses of Copyrighted Works (hereafter called the Commission).

(b) The purpose of the Commission is to study and compile data on:

(1) the reproduction and use of copyrighted works of authorship—

(A) in conjunction with automatic systems capable of storing, processing, retrieving, and transferring information; and

(B) by various forms of machine reproduction, not including reproduction by or at the request of instructors for use in face-to-face teaching activities; and

(2) the creation of new works by the application or intervention of such automatic systems or machine reproduction.

(c) The Commission shall make recommendations as to such changes

88 STAT. 1874

in copyright law or procedures that may be necessary to assure for such purposes access to copyrighted works, and to provide recognition of the rights of copyright owners.

MEMBERSHIP OF THE COMMISSION

17 USC 201 note.

SEC. 202. (a) The Commission shall be composed of thirteen voting members, appointed as follows:

(1) Four members, to be appointed by the President, selected from authors and other copyright owners;

(2) Four members, to be appointed by the President, selected from users of copyright works;

(3) Four nongovernmental members to be appointed by the President, selected from the public generally, with at least one member selected from among experts in consumer protection affairs;

(4) The Librarian of Congress.

(b) The President shall appoint a Chairman, and a Vice Chairman who shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office, from among the four members selected from the public generally, as provided by clause (3) of subsection (a). The Register of Copyrights shall serve ex officio as a nonvoting member of the Commission.

(c) Seven voting members of the Commission shall constitute a quorum.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner as the original appointment was made.

COMPENSATION OF MEMBERS OF COMMISSION

17 USC 201 note.

SEC. 203. (a) Members of the Commission, other than officers or employees of the Federal Government, shall receive compensation at the rate of $100 per day while engaged in the actual performance of Commission duties, plus reimbursement for travel, subsistence, and other necessary expenses in connection with such duties.

(b) Any members of the Commission who are officers or employees of the Federal Government shall serve on the Commission without compensation, but such members shall be reimbursed for travel, subsistence, and other necessary expenses in connection with the performance of their duties.

STAFF

17 USC 201 note.

SEC. 204. (a) To assist in its studies, the Commission may appoint a staff which shall be an administrative part of the Library of Congress. The staff shall be headed by an Executive Director, who shall be responsible to the Commission for the Administration of the duties entrusted to the staff.

(b) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 per day.

EXPENSES OF THE COMMISSION

Appropriation. 17 USC 201 note.

SEC. 205. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this title until June 30, 1976.

REPORTS

SEC. 206. (a) Within one year after the first meeting of the Commission it shall submit to the President and the Congress a preliminary report on its activities. Reports to President and Congress. 17 USC 201 note.

(b) Within three years after the enactment of this Act the Commission shall submit to the President and the Congress a final report on its study and investigation which shall include its recommendations and such proposals for legislation and administrative action as may be necessary to carry out its recommendations.

(c) In addition to the preliminary report and final report required by this section, the Commission may publish such interim reports as it may determine, including but not limited to consultant's reports, transcripts of testimony, seminar reports, and other Commission findings.

POWERS OF THE COMMISSION

SEC. 207. (a) The Commission or, with the authorization of the Commission, any three or more of its members, may, for the purpose of carrying out the provisions of this title, hold hearings, administer oaths, and require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of documentary material. 17 USC 201 note.

(b) With the consent of the Commission, any of its members may hold any meetings, seminars, or conferences considered appropriate to provide a forum for discussion of the problems with which it is dealing.

TERMINATION

SEC. 208. On the sixtieth day after the date of the submission of its final report, the Commission shall terminate and all offices and employment under it shall expire. 17 USC 201 note.

Approved December 31, 1974.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-1531 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 120 (1974):
Sept. 9, considered and passed Senate.
Dec. 19, considered and passed House, amended; Senate concurred in House amendments.

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